

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4792 OF 2005

Jayashree @ Kalyani Umesh Deshpande ...Applicant
VS.
State of Maharashtra ...Respondent

Mr.P.M.Pradhan with Ms Pranali Kakade for the Applicant
Ms S.D.Shinde, A.P.P. for State

CORAM: A.S.OKA, J.
DATE : AUGUST 12, 2005

P.C.:

1. Heard learned Counsel for the Applicant and the learned A.P.P. for State. By order dated 8th August 2005, this Court directed the Applicant to remain present personally. After the Advocate for the Applicant started making submissions, the learned A.P.P. pointed out that the Applicant is not present in the court. The learned Counsel for the Applicant stated that the Applicant was very much present in the Court but at the moment she is not present in the Court. Till the dictation of the order was commenced, the Applicant was not present in the Court room. In fact, this application deserves to be rejected on the ground that the Applicant is not present at the time of hearing of the application. However, I have considered the submissions of the learned Counsel for the parties on merits.

2. The learned Counsel for the Applicant submitted that the Applicant has two minor children and all along she is ready to

co-operate with the police for investigation. He submitted that on plain reading of the statement of the first informant it is impossible to believe that the Applicant can be a part of the conspiracy to kill the deceased. He submitted that the learned Sessions Judge while rejecting the application has proceeded on erroneous footing that the incriminating blood stained clothes have been seized from the house of the Applicant. He submitted that in fact the blood stained articles are seized from the house of the brother of the Applicant at the instance of the co-accused Santosh. He submitted that on plain reading of the statement of the first informant it is crystal clear that the person who was with the deceased is an offender and there is no occasion to come even to the prima facie conclusion that the Applicant is involved in the conspiracy. He submitted that the Applicant was never staying at the relevant time at the place of her brother. The learned A.P.P. has placed on record the relevant material.

3. I have considered the submissions. It is true that the recovery of incriminating articles does not appear to have been made from the place standing in the name of the Applicant and it appears to be from the place of the brother of the Applicant. Perusal of the papers of the investigation show that apart from evidence regarding recovery of blood stained articles, there is enough material on record to show complicity of the Applicant. What has been alleged is

involvement of the Applicant in the conspiracy to kill the deceased. Apart from other material, the fact that few telephone calls which were made through the Cell phone of the Applicant in the night of 31st December 2004 is clear from the statements of the witnesses who have described the role played by the Applicant in the conspiracy.

4. I am not referring to the material brought on record during the course of the investigation as it may cause prejudice to both the parties. Suffice it to say that there is material on record to show the complicity of the Applicant in the offence. The Apex court has held that the gravity of offence and the need for custodial interrogation are the only factors which are required to be considered while deciding an application under Section 438 of Code of Criminal Procedure, 1973. The offence alleged is under Section 302 and the allegation of involvement of the applicant in the conspiracy makes out a case for custodial interrogation. The learned Counsel for the Applicant submitted that the Applicant is willing and ready co-operate for the purposes of investigation and is ready to attend the police station. As held by the Apex Court that a custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is armed with an order under Section 438.

5. In my view, no case is made out for grant of anticipatory

bail. Application is rejected.

JUDGE